

JUN 22 2017

Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
Ph: 541-344-3505 | Fax: 541-344-3516

June 15, 2017

Via Certified Mail, Return Receipt Requested:

Mr. Brad Duff
General Manager, Big Island Dairy
Mr. Riley Smith
Co-owner & Dairy Manager, Big Island Dairy
39-3308 Hawaii Belt Road
Hilo, HI 96720 (also sent by regular mail)

Mr. Steven Whitesides
Manager, Big Island Dairy LLC
P.O. Box 55
Ookala, HI 96774

Mr. Derek Whitesides
Mr. Steven Whitesides
Managers, Big Island Dairy LLC
695 N. 700 E
Rupert, ID 83350

Mr. Glen T. Hale
Registered Agent, Big Island Dairy LLC
2970 Kele St., Ste. 210
Lihue, HI 96766

Via e-mail to:

Daniel V. Steenson
Sawtooth Law Offices, PLLC
1101 W. River Street, Suite 110
Boise, ID 83702
Dan@SawtoothLaw.com

Other recipients identified on last page

**SUPPLEMENTAL NOTICE OF INTENT TO SUE PURSUANT TO THE FEDERAL
WATER POLLUTION CONTROL ACT, 33 U.S.C. § 1365(a)(1)**

Dear Sirs:

This is a supplemental notice of intent to sue Big Island Dairy, LLC that is premised upon and provides further detail to Notifiers' initial Notice of Intent to Sue, sent on April 28, 2017. Pursuant to the citizen suit provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(1) (hereinafter referred to as the "Clean Water Act" or "CWA"), Kupale Ookala, a Hawaii not-for-profit corporation, and Center for Food Safety, a Washington, D.C. not-for-profit corporation (hereinafter, "Notifiers"), hereby notify you that on or after the 60th day from the date of this notice, Notifiers intend to initiate or amend a citizen lawsuit in Hawaii Federal District Court against Big Island Dairy, LLC, the owner of Big Island Dairy, located at

39-3308 Hawaii Belt Road (hereinafter referred to as “Big Island Dairy”). This notice letter expressly incorporates by reference the contents of Notifiers’ initial Notice of Intent to Sue, sent on April 28, 2017. The lawsuit will allege that Big Island Dairy has violated and remains in violation of the Clean Water Act and applicable state water pollution control laws by discharging animal wastes, solid manure, liquid manure, fuel, and chemical pollutants to waters of the United States without coverage under a valid National Pollutant Discharge Elimination System (“NPDES”) permit, and by failing to comply with the terms of its NPDES permit authorizing discharges of stormwater associated with construction activities. The animal waste contains bacteria and other pathogens, as well as hormones and antibiotics used on the animals, which are harmful to human health and the environment.

VIOLATIONS OF THE CLEAN WATER ACT

Notifiers intend to initiate or amend a citizen suit on or after the 60th day from the date of this letter against Big Island Dairy for failing to comply with the Clean Water Act. In addition to the allegations included in Notifiers’ April 28, 2017 Notice of Intent to Sue (“NOI”), Notifiers will allege that Big Island Dairy’s improper land application, compost storage, and liquid manure storage and handling practices are resulting in unlawful discharges of animal waste to area gulches—and in turn, the Pacific Ocean—from point sources that are hydrologically connected to surface waters. As previously noted, concentrated animal feeding operations, such as Big Island Dairy, are defined as point sources under the Clean Water Act. 33 U.S.C. § 1362(14). Big Island Dairy’s fields, production areas, and lagoons discharge pollutants to ground and groundwater that is hydrologically connected to Alaialoa Gulch, Kaohaoha Gulch, and Kaula Gulch; those gulches flow into the Pacific Ocean. The Hawaii District Court has recognized that groundwater may serve as a conduit through which pollutants are discharged, such that liability under the Clean Water Act may attach. *Hawaii Wildlife Fund v. County of Maui*, 24 F. Supp. 3d 980, 994, 998 (D. Haw. 2014), appeal docketed, No. 15-17447 (9th Cir. Dec. 15, 2015). Alaialoa Gulch, Kaohaoha Gulch, and Kaula Gulch are either waters of the United States, or are point source conduits that discharge to waters of the United States (the Pacific Ocean).

Discharges of liquid and solid animal waste, wastewater, process water, washwater, debris, sediment, deceased cows or parts thereof, fuel, and chemicals resulting from Big Island Dairy’s improper application and storage practices, and improper operational practices, as described above, have occurred and continue to occur regularly, on approximately a weekly basis, from at least April 28, 2012 to present, into one or more of Alaialoa Gulch, Kaohaoha Gulch, and Kaula Gulch, which are classified as Class 2 inland state waters that flow into the Pacific Ocean. These discharges pollute the environment and expose the community to significant health risks, including exposure to *E. coli*, and other bacteria and types of pathogens.

In addition to the recurring discharges described above and in Notifiers’ April 28, 2017 NOI, upon information and belief, unpermitted discharges resulting from the improper management and storage practices described above have occurred on at least the following specific dates (these dates are in addition to those dates listed in Notifiers’ April 28, 2017 NOI):

- 3/29/17: animal waste discharge into Kaohaoha Gulch, as documented by HDOH
- 5/15/17: animal waste discharge into Alaialoa Gulch

- 5/15/17: animal waste discharge into Kaula Gulch
- 5/18/17: animal waste discharge into Kaula Gulch

CIVIL PENALTIES

Notifiers will allege in the lawsuit that each of the separate failures identified above and in their April 28, 2017 NOI constitutes a discrete violation of the Clean Water Act, subjecting Big Island Dairy to a daily penalty of up to \$51,570 per day, per violation.

In addition to civil penalties, Notifiers will seek an order requiring Big Island Dairy to abate all discharges and to obtain and come into full compliance with an individual NPDES CAFO Permit and with the terms of its Stormwater Construction Permit. Furthermore, Notifiers will seek an order from the Court requiring Big Island Dairy to pay Notifiers' attorneys' fees and costs, which include expert witness fees and costs.

PARTIES GIVING NOTICE

The names, addresses, and phone numbers of the parties giving this Notice of Intent to Sue are:

Kupale Ookala
P.O. Box 5
Ookala, HI 96774
Tel: 808-216-1028

Center for Food Safety
1132 Bishop Street, Suite 2107
Honolulu, HI 96813
Tel: 808-681-7688

The names, addresses, and phone numbers of counsel for the parties giving this Notice of Intent to Sue are:

Charles M. Tebbutt
Sarah A. Matsumoto
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
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Paige Tomaselli

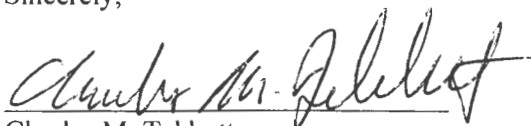
Sylvia Wu
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CONCLUSION

We will be available to discuss effective remedies and actions that will assure Big Island Dairy's future compliance with the Clean Water Act, and all other applicable state and federal environmental laws. As the lawyers for the parties have already established contact, if you have any questions about the content of this supplemental notice and wish to work with Notifiers to resolve the pollution discharges from Big Island Dairy, as Notifiers have offered but so far been ignored, please contact the undersigned.

Sincerely,



Charles M. Tebbutt
Sarah A. Matsumoto
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.

cc Via Certified Mail, Return Receipt Requested, to the following:

Scott Pruitt, Administrator
U.S. Environmental Protection Agency, Mail Code: 1101A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.

San Francisco, CA 94105

Dr. Virginia Pressler, Director
State of Hawai'i, Department of Health
1250 Punchbowl Street
Honolulu, HI, 96813